IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

Crl.MC.No. 616 of 2007()

CMP.8729/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT, IRINJALAKUDA
CR.NO.345/2006 OF PUDUKAD POLICE STATION

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PETITIONER: CLAIM PETITIONER

K.P.JINOY, AGED 26 YEARS, S/O. PAUL,
KALLUKARAN HOUSE, VARANTHARAPPILLY.

BY ADV. SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE,
PUDUKAD POLICE STATION, THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 07/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.616 of 2007

Dated this the 7th day of March 2007

O R D E R

The petitioner is the owner of a vehicle. According to him, he had purchased the vehicle bona fide for consideration. The police have now seized the vehicle. Police suspects that the vehicle is a stolen vehicle and there has been tampering with the engine number and chasis number of the vehicle. The vehicle was seized in the course of investigation. The police have no case so far that the petitioner has any contumacious role in the commission of the offence. The petitioner, in these circumstances, applied for release of the vehicle to him. There is no other claimant for the vehicle. The learned Magistrate accepted the request for release of the vehicle, subject to conditions. The petitioner complains about one condition imposed, that is condition No.3, which I extract below:

> "The petitioner shall produce the bank guarantee for the bond amount or to produce the title deeds of the immovable property in originals of the sureties as security".

2. The learned counsel for the petitioner submits that the learned Magistrate had already imposed condition No.1 that the petitioner must execute a bond for Rs.7,00,000/- with two solvent sureties each for the like sum. In these circumstances, it is unnecessary to insist on condition No.3. Because of the onerous nature of condition No.3, the petitioner is unable to claim back the vehicle. It is, in these circumstances prayed that the said condition may be deleted. The petitioner shall produce solvent sureties. The requisite satisfaction in the mind of the learned Magistrate that the sureties are solvent shall be induced by production of appropriate documents. A rigid insistence on production of bank guarantee or title deeds may not be made. This, in short, is the request made by the counsel.

3. I must take note of the decision in Sunderbhai Ambalal Desai v. State of Gujarat [SC 2003(2) KLT 1089]. The vehicle has not been taken release from the custody of the court. There is no other claimant also. In these circumstances, it is very essential that the property is preserved and protected. I am, in these circumstances, satisfied that insistence on bank guarantee need not be made. The rigid insistence on production of originals of

the title deeds of the sureties can also be dispensed with. It need only be directed that the learned Magistrate must carefully evaluate the sufficiency and acceptability of the sureties.

4. In the result, this Criminal Miscellaneous Case is allowed in part. Condition No.3 is deleted. But it is directed that the learned Magistrate must carefully evaluate the acceptability of the sureties which they have accepted.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006